ORIGINAL

Supreme Court, U.S.
FILED
SEP 25 2000
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 00-6374

Dale G. Becker

Petitioner,

- against -

Betty Montgomery, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RECEIVED
SEP 25 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S

Respectfully Submitted,

Dale G. Becker

Dale G. Becker
No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

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QUESTION PRESENTED FOR REVIEW

There are conflicting opinions among the appellate courts and this courts' jurisdiction is needed to establish uniformity among the circuits. The dismissal of petitioner's "appeal on the basis that the notice of appeal was not signed" is in conflict with opinions of the 5th, 7th, 9th, and 11th circuits which generally state that a "timely but unsigned notice of appeal satifies the judisdictional requirements of Rule 4(a)."

The 6th Circuit has prejudiced and discrimnated against this Petitioner in violation of the 8th Amendment, when the 6th circuit led the opposing counsel, in another case, by the hand and permitted them to resubmit the unsigned conclusion page after they signed that page but dismissed petitioner's case for not signing the notice of appeal when the District Form # 6CA, did not provide any space for a signature. If the notice of appeal was not in compliance, then the question is why did the 6th circuit issue a briefing schedule and permit all parties to brief the case, and/or why did the 6th circuit not give petitioner the same opportunity to correct and resubmit as was given to opposing counsel?

P A R T I E S

Petitioner, Dale G. Becker, is a State prisoner confined at the Chillicothe Correctional Institute located in Chillicothe, Ohio, County of Ross.

DEFENDANTS:

Betty Montgonery, Ohio Attorney General, 140 East Town Street, Columbus, Ohio 43215-6001 and all Attorneys employed by the Ohio State Attorney General.

Mal Payne, Unit Manager of H-Dorm in 1997, P.O. Box 5500, Chillicothe, Ohio 45601.

Kay Carneine, institution Inspector at time of CCI, P.O. Box 5500, Chillicothe, Ohio 45601.

L.C. Coval, Assistant Chief Inspector, 1050 Freeway Drive North, Columbus, Ohio 43229.

Ernie Moore, Deputy Warden of Operations, P.O. Box 5500, Chillicothe, Ohio 45601.

Fred McAninch, Warden of the Chillicothe Correctional Institute in 1997, 1050 Freeway Drive North, Columbus, Ohio 43229.

Gary Moore, Warden of the Chillicothe Correctional Institute in 1998, 1050 Freeway Drive North, Columbus, Ohio 43229.

Michael Randall, Warden of the Chillicothe Correctional Institute in 1999, P.O. Box 5500, Chillicothe, Ohio 45601.

Bobbie McKeever, Sergeant of E-1 Unit in 1997, P.O. Box 5500, Chillicothe, Ohio 45601.

Danny Pfeifer, Unit Manager of E-1 Unit, P.O. Box 5500, Chillicothe, Ohio 45601.

Kenneth Eberts, Unit Manager Administrator, P.O. Box 5500, Chillicothe, Ohio 45601.

CITATIONS (Decisions Below)

July 28, 1999	Petitioner filed this action in the U.S. District Court, Southern District, Eastern Division, and was dismissed for 'failure to exhaust his prison administrative remedies.'
September 20, 1999	From that decision Petitioner appealed to the 6th circuit.
October 27, 1999	Petitioner received the Briefing Schedule, app 6 & 7.
May 12, 2000	Order stating that this court lacks jurisdiction for the notice of appeal wan not signed.
May 22, 2000	Correction Brief for Reconsideration filed.
July 14, 2000	Dismissing appeal on the basis that the notice of appeal was not signed.

From that order Petitioner is Petitioning this court for Writ of Certiorari.

J U R I S D I C T I O N

Jurisdiction is conferred upon this court by 28 U.S.C. §1254 to review by Writ of Certiorari a decision from the 6th circuit court of appeals.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The provisions of the First and Fourteenth Amendments to the United States Constitution as well as case law decided in the circuits are involved being equal protection and equal treatment of the laws.

STATEMENT OF THE CASE

The 6th circuit opinions, app 1 & 5, is in direct conflict with the 5th, 7th, 9th, and 11th circuits rulings, app 3 & 4. These circuits opinions are that there are no rules regarding signing the notice of appeal, and when timely filed but unsigned notice of appeal satisfies jurisdictional requirements.

The 6th circuit refused to reconsider, app 5, and permit Petitioner to submit a signed notice of appeal, even though, the 6th circuit did accept Petitioner's unsigned notice of appeal, app 2, ("A signature may be...typewritten..." Blacks Law, Giebelhaus v. Spindrift Yachts, 938 F.2d at 965 (9th Cir. 1991) "...because his typed name on the suspect pleadings constitutes a signature.") and did set up the Briefing Schedule, app 6 & 7, and all parties had opportunity to brief this case, but permitted opposing counsel, after notice from the 6th circuit, app 8, to correct an unsigned conclusion page.

Being there are numerous opinions, to have notice of appeal unsigned, except the 6th circuit, to meet jurisdictional requirements, a decision from this the United States Supreme Court is needed to establish uniformity in the circuits.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflict With Decisions of Other Circuit Courts

The opinion of the 6th corcuit, app 1, conflicts with opinions of four (4) other circuits; 5th, 7th, 9th, and 11th circuits when the 6th circuit dismissed Petitioner's case "because it [the notice of appeal] wan not signed, app 2.

McNeal v. Blackburn, 802 F.2d 830 at 832 (5th Cir. 1986), app 3;

> "...timely but unsigned notice of appeal satisfies the jurisdictional requirement of Rule 4(a)."

And also;

Robinson v. City of Chicago, 886 F.2d at 963, n.2 (7th Cir. 1989), app 3;

> "...an unsigned notice of appeal ... meets the jurisdictional requirements."

Petitioner's notice of appeal did meet the requirements in the opinions of;

Giebelhaus v. Spindrift Yachts, 938 F.2d at 965 (9th Cir. 1991) all 4;

> "...because his typed name on the suspect pleadings constitutes a signature."

And also;

Thiem v. Hertz Corp., 732 F.2d 1559 (11th Cir. 1984), app 4;

> "In our judgment, however, the notice with the typed names of counsel and appellant was sufficient to give this court jurisdiction.'

The 6th circuit decision to dismiss my appeal in in contrary to there own opinions;

Ashiegub v. Puriance, 76 F.Supp.2d at 828 (S.D Ohio 1998);

> "A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." See Hanes v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.E.2d 652 (1972): see also Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.E.2d 251 (1976).

Zolman v. I.R.S., 87 F.Supp.2d 763 (W.D. Mich. 1999);

> "Further, as plaintiff is proceeding pro se, the complaint must be given a liberal reading, and is not held to the standard applicable to complaints drafted by trained legal conusel."

And also a decison from this Court;

Torres v. Oakland Scavenger Co., 108 S.Ct. 2405 at 2408 (1988) app 4;

> 'mere technicalities" should not stand in the way of consideration of a case on its merit.

All these numerous opinions that state that a notice of appeal, unsigned by hand, does meet jurisdictional requirements, except the 6th circuit disagrees. This Court's decision is needed to establish uniformity in the circuits and put an end to the question to sigh or not to sigh the notice of appeal to meet the jurisdictional requirement.

B. Importance of the Question Presented.

Petitioner filed a Motion for Reconsideration to this question of hand signed notice of appeal but was denied by the 6th circuit, app 5. Even though the 6th circuit accepted Petitioner's unsigned bu hand notice of appeal, app 2, and did issue a Briefing Schedule, app 6 & 7, and all parties had opportunity to brief this case.

The 6th circuit deliberately mis-quoted Fed.R.App.P. Rules 4(a)(1) & 3(c) and Rule 11, Fed.R.Civ.P. to fit their ruling in Matingly v. Farmer State Bank, 153 F.3d at 337 (6th Cir. 1998);

> Rule 11(a) of the Federal Rules of Civil Procedure, which governs the filing of pleading and other documents in the district court, provides that "[e]very pleadings, written motion, and other paper shall be signed by" the attorney representing the party or the party himself if he is proceeding pro se. As a notice of appeal is an "other paper" filed with the district court, it is clear that Fed.R.App.P. 4(a)(1) requires that a notice of appeal must be signed in order for it to be considered properly filed. This reading of the relevant rules is acknowledged by Fed.R.App.P. 3(c), which notes that "[a] notice of appeal filed pro se is filed on behalf of the party signing the notice ...." (emphasis added).

No where in either Rule 4(a)(1) or 3(c) does it state "signing the notice" or (emphasis added). Complete copy of rule 4(a)(1) & 3(c) on page 9 APPENDIX. "But naming a party is a specified appellate requirement; a sighed notice is not." Robinson supra. Also in McNeil supra, "The Federal Rules of Appellate Procedure have no provision for signing pleadings, as is found in Rule 11, Fed.R.Civ.P. There is some doubt as to whether that Rule applies to notice of appeal at all."

If, the unsigned by hand notice of appeal was "defective" in the 6th circuit's opinion, app 1, the 6th circuit should of went by Rule 11, Fed.R.Civ.P.

> An unsigned paper shall be stricken unless omission of the signature is corrected promptly after called to the attention of the attorney or party.

That is exactly what the 6th circuit did in another case the Petitioner is litigating, when the 6th circuit permitted opposing counsel, after notice from the 6th circuit to correct an unsigned conclusion page, app 8.

The 6th circuit was prejudice and discriminated against pro se incarcerated petitioner in violation of the 1st and 14th Amendments to the United States Constitution and numerous case law, when opposing counsel was **led by the hand** to comply with Rule 11, Fed.R.Civ.P. but Petitioner's case was dismissed because

the 6th circuit did not follow Rule 11, Fed.R.Civ.P. and give Petitioner "a fair and meaningful consideration." Donold v. Cook County Sheriff Dep't, 95 F.3d at 555, (7th Cir. 1996); Also, S.F.C. v. Elliot, 953 F.2d 2560 (11th Cir. 1992);

> When interpreting pro-se papers court should use common sense to determine what relief party desires.

How many hurdles does a pro-se incarcerated litigant have to overcome when the Ohio Attorney General was led by the hand by the 6th circuit to get the advantage? All Petitioner is asking is to given the same consideration as trained attorneys. Even though, Petitioner, as pro se, should be "held to a less stringent standard as trained counsel." Ashieguh supra.

C O N C L U S I O N

I an aware that only a very small percent of cases are granted certiorari. If I did not believe that this case raises an important question the United States Supreme Court can only answer, I would not have wasted my time and yours.

Petitioner does believe that the conflicting opinions among the circuits does need to be address by this Court to establish uniformity among the circuits.

Petitioner respectfully request, for the facts, case law, and reasons stated asbove, that this Honorable Court would issue a Writ of Certiorari and return this case to the appellate court for a ruling on the merits of the case, that is all Petitioner request.

Respectfully Submitted,

Dale G. Becker, No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

VERIFICATION DECLARATION

In accordance with U.S.C. §1746, Unsworn Declaration, the Petitioner hereby declares under penalty of perjury, that these statements are true and correct to the best of his knowledge, belief and information.

Dale G. Becker, No. 249-474

CERTIFICATE OF SERVICE

I do certify that a true and correct copy of this within Petition for Writ of Certiorari has been sent to the Office of the Attorney General, 140 East Town Street, Columbus, Ohio 43215-6001, by regular U.S. Mail, postage prepaid, on this the 20 day of September, 2000.

Sept 20, 2000
Date Signed

Dale G. Becker, No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

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SUPREME COURT, U.S.

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Supreme Court, U.S.
FILED
SEP 25 2000
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No._____

Dale G. Becker

Petitioner,

- against -

Betty Montgomery, et al.,

Respondents.

APPENDIX

ONE COMPLETE SET OF EXHIBITS AND CASES

RECEIVED
SEP 25 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Respectfully Submitted,

Dale G Becker

Dale G. Becker
No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

No. 99-4190

FILED
MAY 12 2000
LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DALE G. BECKER,

Plaintiff-Appellant,

v.

BETTY MONTGOMERY, et al.,

Defendants-Appellees.

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

Before: BATCHELDER, MOORE, and BEEZER*, Circuit Judges.

This matter is before the court upon initial consideration of appellate jurisdiction.

A review of the documents before the court indicates that the judgment of the district court was entered August 30, 1999. A notice of appeal was filed from that decision but it was not signed.

This court lacks jurisdiction over this appeal. The notice of appeal is defective because it was not signed by the pro se appellant or by a qualified attorney. *See Mattingly v. Farmers State Bank*, 153 F.3d 336, 337-38 (6th Cir. 1998) (per curiam).

It is ordered that the appeal is dismissed.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

*The Honorable Robert R. Beezer, Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

FILED
KENNETH J. MURPHY
CLERK

99 SEP 20 PM 1:25

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

Exhibit C

UNITED STATES DISTRICT COURT

FOR THE Southern DISTRICT OF Ohio

Dale G. Becker

Docket Number C2-99-825

Judge Sargus
(District Court Judge)

Betty Montgomery, et al.

NOTICE OF APPEAL

Notice is hereby given that Dale G. Becker appeals to the United States Court of Appeals for the Sixth Circuit from the (XXX) Judgment (___) Order (___) Other (specify) _____ entered in this action on August 27,1999
(Date)

Dale G. Becker
(Counsel for Appellant)

Address Box 5500

No. 249-474

Chillicothe, Ohio 45601-0990

Phone: _____

Date September 13,1999

6CA-3
8/70

BEST AVAILABLE COPY

App 2

*U.S. GPO: 1998-751-804/40005

McNeil v. Blackburn, 802 F.2d 830 at 832 (5th Cir. 1986)

We must decide, therefore, whether petitioner's timely but unsigned notice of appeal satisfies the jurisdictional requirement of Rule 4(a). We hold that it does. As our sister circuit has stated:

> The Federal Rules of Appellate Procedure have no provision for signing pleadings, as is found in Rule 11, Fed.R.Civ.P. There is some doubt as to whether that Rule applies to notice of appeal at all. In any event, it appears clear that the rules do not require a decision that this Court is without jurisdiction to hear this appeal.

Thiem v. Hertz Corp. 732 F.2d 1559,1563 (11th Cir. 1984)(Citing J. Moore & B. Ward, Moore's Federal Practice, ¶203.17, at 3-72 & n. 17 (2d ed.1983)). Hence, this court has jurisdiction to consider the issues raised in this appeal.

Robinson v. City of Chicago, 868 F.2d 959 at 963, n. 2 (7th Cir. 1989)

In any event, an unsigned notice of appeal, even if it does not meet the demands of Fed.R.Civ.P. 11, meets the jurisdictional requirements for appeal. See, e.g., McNeil v. Blackburn, 802 F. 2d 830, 832 (5th Cir. 1986) (per curium); Lewis, supra, 784 F.2d at 831; see also Thiem v. Hertz Corp., 732F.2d 1559, 1562 (11th Cir. 1984). Plaintiff points to Fed.R.App.P. 3(c), which provides that "the notice of appeal shall specify the party or parties taking the appeal." Failure to name a party is jurisdictional and requires dismissing the appeal. See Torres v. Oakland Scavenger Co., 487 U.S. 312, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988). But naming a party is a specified appellate requirement; a signed notice is not. Thus, while we emphasize that a notice of appeal must be signed, there is nothing in the Torres decision, or in our cases applying Torres, Such as Allen Archery, Inc. v. Precision Shooting Equipment,Inc., 857 F.2d 1176, 1177 (7th Cir. 1988)(per curium), which suggest that we should dismiss this appeal.

App 3

Ciebelhaus v. Spindrift Yachts, 938 F.2d 962 at 965 (9th Cir. 1991)

"...because his typed name on the suspect pleadings constitutes a signature."

Thiem v. Hertz Corp, 732F.2d 1559 (11th Cir. 1984)

In our judgment, however, the notice with the typed names of counsel and appellant was sufficient to give this Court jurisdiction.

The provision for content of the notice of appeal, and the lack of any rigidness in connection there with, is found in Federal Appellant Rule 3(c):

> The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

The Federal Rules of Appellate Procedure have no provision for signing pleadings, as is found in Rule 11, Fed.R.Civ.P. There is some doubt as to whether that Rule applies to notice of appeal as all."

Torres v. Oakland Scavenger Co., 108 S.Ct. 2405 at 2408 (1988)

We do not dispute the important principle for which Foman [v. Davis, 371 U.S. 178. 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)] stands---that the requirement of the rules of procedure should be liberally construed and "mere technicalities" should not stand in the way of consideration of a case on its merits. Ibid. Thus, if a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires.

App 4

No. 99-4190

EXHIBIT A

FILED

JUL 14 2000

LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DALE G. BECKER,

Plaintiff-Appellant,

v.

BETTY MONTGOMERY, et al.,

Defendants-Appellees.

ORDER

Before: BATCHELDER, MOORE, and BEEZER*, Circuit Judges.

Plaintiff-appellant has filed a motion for reconsideration of this court's order of May 12, 2000 dismissing the appeal on the basis that the notice of appeal was not signed.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The motion for reconsideration is denied.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

*The Honorable Robert R. Beezer, Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

App 5

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

CAROL FIELD
(513) 564-7024

Filed: October 27, 1999

Dale G. Becker
Chillicothe Correctional Institute
#249-474
P.O. Box 5500
Chillicothe, OH 45601

Betty Montgomery
Office of the Attorney General
of Ohio
30 E. Broad Street
17th Floor State Office Tower
Columbus, OH 43215-3428

RE: 99-4190
Becker vs. Montgomery
District Court No. 99-00825

We have today docketed the above-styled case as number **99-4190** in this Court. This case number must appear on all documents related to this case which are submitted to the Court.

The briefing schedule for this appeal is listed below. The briefs and joint appendix will be deemed filed on the day of mailing if sent by ordinary first-class mail or third party commercial carrier.

The court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case. Enclosed you will find a form to be used to present your case in your own words as clearly as you can. Your failure to file a brief or joint appendix (as applicable) by the established due dates may result in the dismissal of your case.

BRIEFING SCHEDULE

Appellant's Brief:	Signed original & 6 Copies (See attached Pro Se Brief Form) Maximum 30 Pages **Due 11/24/99**
Appellee's Brief:	Signed original & 6 Copies Red Cover Maximum Length: See Rule 32 for page or type - volume limitations **Due 12/22/99**
Appellant's Reply Brief: (Optional)	Signed original & 6 Copies Maximum 15 Pages **Due 1/5/00**
Joint Appendix or: Photocopies of Record	5 Copies of Joint Appendix or 4 Copies of Record White Cover **Due 1/12/00**

In prisoner cases filed pro se and in forma pauperis, the state attorney general or the United States Attorney, as the case may be, is required to file an adequate appendix. The appendix shall include copies of the opinion and order from which the appeal is taken.

Two copies of your brief and one copy of the joint appendix (as applicable) are to be served on opposing counsel, pursuant to Fed. R. App. P. 25(d). A certificate of service must accompany the submission of any document to this court.

If you have any questions about these instructions, you should contact the case manager at the number listed above.

(Ms.) Carol Field
Case Manager

App 6

App 7

LEONARD GREEN
CLERK

FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

VALERIE FIELDS
(513) 564-7026

Filed: July 18, 2000

Exhibit B

Ms. Dawn M. Tarka
Office of the Attorney General
Corrections Litigation Section
140 E. Town Street
14th Floor
Columbus, OH 43215-6001

RE: 00-3631
Becker vs. Ghee
District Court No. 99-00966

Dear Counsel:

This is to advise you that on July 17, 2000 we received the briefs you submitted on behalf of your client. Upon review we we have determined that it does not comply with the relevant Federal Rules of Appellate Procedure or the Sixth Circuit Rules, in the following manner:

No Form of Appearance of Counsel was filed. The form is enclosed.
The briefs need attorney's signature on conclusion page.
Please do not call document "final" because the Court considers this a regular appellee brief.

Accordingly, we ask that you submit an original and six (6) copies of the signed conclusion page and appearance of counsel form to this office not later than 7/24/00 . No extensions will be granted. Upon receipt, the corrected copies will be substituted for the orginal filing, which will then be discarded.

Thank you for your cooperation with this request. Any inquiries you may have can be addressed to the undersigned.

Leonard Green, Clerk

(Ms.) Valerie Fields
Deputy Clerk

cc:
Dale G. Becker

App 8

Federal Rules of Appellate Procedure

R U L E 4(a)(1);

In a civil case in which an appeal is permitted by law as of right form a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

R U L E 3(c);

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

App 9